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IDAHO PERSONNEL COMMISSION  
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**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

	)	
	)	
RICK ANDERSON,	)	
	)	
Respondent,	)	
	)	IPC NO. 96-11
	)	
vs.	)	
	)	
IDAHO DEPARTMENT OF	)	<b>DECISION AND ORDER ON</b>
CORRECTION,	)	<b>REQUEST FOR ATTORNEY</b>
	)	<b>FEES AND COSTS</b>
	)	
Petitioner.	)	
_____	)	

THIS MATTER comes before the Commission on Respondent Rick Anderson's (Anderson) Request for Attorney Fees and Costs. The Commission entered its decision on the Department of Correction's (DOC) petition for review in favor of Rick Anderson on July 2, 1998. Respondent Anderson was represented by Jim Jones, Esq.. Petitioner DOC was represented by Timothy McNeese, Deputy Attorney General.

Having reviewed Anderson's request, supporting affidavit, and the record, the Commission  
HEREBY ORDERS AS FOLLOWS:

1. In the Commission's decision on the petition for review, entered on July 2 1998, the Commission affirmed the hearing officer's decision in favor of respondent Anderson, including the

hearing officer's finding that DOC acted without a reasonable basis in fact or law and the resulting award of reasonable attorney fees and costs. (Commission's Decision and Order, p. 20).

2. Accordingly, Anderson is entitled to an award of reasonable attorney fees and costs in the proceedings before the Commission on DOC's petition for review.

3. Within ten (10) days of the Commission's decision, Anderson filed a request for an award of fees and costs together with a supporting verified memorandum. *See* IDAPA 28.01.01.202.08.

4. DOC filed a written objection to Anderson's request, disputing any entitlement to fees and costs, and objecting to both the hourly rate claimed by Anderson's counsel as well as the number of hours claimed by Anderson's counsel.

5. IPC Rule 202.08 (IDAPA 28.01.01.202.08) directs the Commission, in awarding reasonable fees and costs, to take into account factors set forth in IPC Rule 201.11 (IDAPA 28.01.01.201.11). To this end, the Commission finds:

a. Time and Labor Required: The Commission finds that the time and labor spent representing Anderson was reasonable and not excessive. Anderson's counsel had to respond to an over-length memorandum, and review an extensive record. Petitioner, in its affidavit in support of a request for an extension of the briefing schedule noted the extreme length of the transcript and the time-consuming nature of the review and briefing. Similarly, DOC's request for a continuance in order to prepare for the oral argument is indicative that the time and labor spent by Anderson's counsel in preparing for the oral argument and defending against DOC's petition for review was reasonable.

b. Experience and Ability of the Attorney: Anderson's attorney has practiced law in the state of Idaho for over thirty (30) years. His abilities were amply demonstrated by successfully representing his client before the hearing officer and the Commission.

c. Prevailing Charges for Like Work: The hearing officer found that a fee of \$150.00 per hour exceeds the rates previously approved in appeals to the Commission, but was not

unreasonable under the circumstances of this case. (Hearing Officer's Order Awarding Attorney Fees and Expenses, p. 2). We find likewise.

d. Amount Involved and Results Obtained: Anderson claims \$4,762.50 in fees. Anderson was successful in obtaining complete relief at both stages of the Personnel Commission process.

e. Awards in Similar Cases: Based upon the amount awarded before the hearing officer, and the determination that the rate of \$150.00 per hour is reasonable for Mr. Jones' services, the Commission finds that the total amount of the requested fees is reasonable, and consistent with previous awards made by this Commission.

6. Anderson claims total costs in the amount of \$53.20. We find this amount (along with the items charged) reasonable.

IT IS HEREBY ORDERED that Anderson is awarded attorney fees in the amount of \$4,762.50 and costs in the amount of \$53.20 for a total award of \$4,815.70.

### **STATEMENT OF APPEAL RIGHTS**

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 17th day of August, 1998.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

/s/\_\_\_\_\_  
Sherry Dyer, Chair

/s/\_\_\_\_\_  
Peter Boyd

/s/\_\_\_\_\_  
Ken Wieneke

\_\_\_\_\_  
Don Miller

/s/\_\_\_\_\_  
Dale Tankersley

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the DECISION AND ORDER ON REQUEST FOR FEES AND COSTS in *Anderson v. Idaho Dep't of Correction*, IPC No. 96-11, was delivered to the following parties by the method stated below on the 17th day of August, 1998.

**FIRST CLASS MAIL**

Jim Jones  
Attorney at Law  
1275 Shoreline Lane  
Boise ID 83702-6870

**STATEHOUSE MAIL**

Timothy R. McNeese  
Deputy Attorney General  
Department of Correction  
Statehouse Mail

/s/\_\_\_\_\_  
Val E. Rodriguez